1951 K **File No.** B Agrl Debt Relief | 51

Legal Dept.

B **BRANCH**

Subject:— A Bill No. XXXIV of 1951

A Bill to amend the Bombay Agriculturists Debtors Relief Act 1947

Bom Act No. XLI of 1951

File No. B. Agrl Debt Relief | 51

820 - B

Office of the R.L.A.

A requisite draft Bill is sent herewith.

2. The subject-matter of the Bill falls under entry 30 in List II and entry 9 in List III in the Seventh Schedule to the Constitution.

3. The Bill does not require any sanction or recommendation but when passed will have to be reserved for the consideration of the President with reference, to Article 254(2).

Sd./-
Remembrancer of Legal Affair

U.N. to D.D., No. 12071; dated the 28th July, 1951.

SVV
23.6.56.
4 c.

No. 181-L
Legal Department,
Council Hall, Poona, 18th September, 1951.

From

Shri J.R.Dhurandhar,
Secretary to the Government of Bombay.

To

The Secretary to the Governor of Bombay.

Subject:- The Bombay Agricultural Debtors Relief (Amendment) Bill, 1951.

Sir,

With reference to article 200 of the Constitution of India, I am directed to forward herewith for being presented to His Excellency the Governor the authentic copy of the Bombay Agricultural Debtors Relief (Amendment) Bill, 1951, which was read for the third time and passed at the meetings of the Bombay Legislative Assembly and the Bombay Legislative Council held on the 17th and the 31st August 1951, respectively.

2. The subject-matter of the Bill falls under entry 30 in List II and entry 9 in List III in the Seventh Schedule to the Constitution of India. As the provisions of the Bill are repugnant to the provisions of the Provincial Insolvency Act, 1920, and the Bombay Agricultural Debtors Relief Act, 1947, in so far as they relate to entry 9 in the Concurrent Legislative List, it is necessary to reserve the Bill for the consideration of the President with reference to article 254(2) of the Constitution.

3. I also forward herewith six copies of the items

1. Bill as introduced in the Bombay Legislative Assembly with the Statement of Objects and Reasons.	Nos. 1 and 2 and two copies of item No. 3 of
2. Bill as read for the third time and passed by the Bombay Legislative Council.	

of .....

3. Extracts from the proceedings of the Bombay Legislative Assembly dated the 17th August 1951 and of the Bombay Legislative Council dated the 31st August, 1951.	:	of the papers noted

in the margin. The Bill was not referred to a Select Committee.

Yours faithfully,

Sd./-
18/9
Secretary to Government.

Through:

The Secretary to the Government of Bombay,
Development Department.

SVV
23.6.56.
4 c.

No. G.S. - 2400.

From

THE SECRETARY TO THE GOVERNOR OF BOMBAY.

To

The Secretary to the Bombay Legislature
Department, Council Hall, Poona.

Government House,
Ganeshkhind, Poona, 7: Sept. 20, 1951.

Subject: The Bombay Agricultural Debtors Relief (Amendment) Bill, 1951.

Sir,

With reference to the Bombay Agricultural Debtors Relief (Amendment) Bill, 1951, which was passed by the Bombay Legislative Assembly and the Bombay Legislative Council on August ~~Council on August~~ 17 and 31, 1951, respectively, I am directed to state, for the information of the Honourable the Speaker and the Honourable the Chairman, that as the provisions of the Bill are repugnant to the provisions of the Provincial Insolvency Act, 1920 and the Bombay Agricultural Debtors Relief Act, 1947, in so far as they relate to entry 9 in the Concurrent Legislative List, it is necessary to reserve the Bill for the consideration of the President with reference to article 254(2) of the Constitution of India. His Excellency the Governor has accordingly beeng pleased, under article 200 of the Constitution, to declare that he reserves the Bill for the consideration of the President.

Yours faithfully,

Sd./- L.M. Nadkarni,
Secretary to the Governor
of Bombay.

.....

No. G.S. - 2401
Office of the Secretary to the
Governor,
Government House, Ganeshkhind,
Poona 7, September 20, 1951.

Copy forwarded with compliments to:-

1. Secretary to Government, Legal Department, with reference to his letter No. 181-L, dated September 18, 1951.

2. Secretary to Government, Development Department, with reference to his endorsement dated September 18, 1951.

Sd./-
Secretary to the Governor.

SVV
23.6.56.
4 c.

No. G.S. - 2921

From

THE SECRETARY TO THE GOVERNOR OF BOMBAY.

To

The Secretary to Government,
Legal Department.

Government House,
Bombay (6), November 5, 1951.

Subject:- The Bombay Agricultural Debtors Relief (Amendment) Bill, 1951.

Sir,

In continuation of my letter No. G.S. - 2654, dated October 29, 1951, I am directed to forward herewith the authentic copy of the Bombay Agricultural Debtors Relief (Amendment) Bill, 1951, with the President's assent signified thereon.

Yours faithfully,

Sd./-
for Secretary to the Governor
of Bombay.

BVV
23.6.56.
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ACTS.

Publication of the Bombay Agricultural Debrors Relief (Amendment) Act, 1951.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 12565

Bombay Castle, 6th November, 1951.

Letter to the Secretary to the Governor, No. 181-L, dated the 18th Setpember, 1951.

Letter from the Secretary to the Governor, No. G.S. 2854, dated the 29th October, 1951.

"With reference to the correspondence ending with your letter No. 16447, dated October 16, 1951, I am to say that intimation has been received from the Government of India, Ministry of Home Affairs, that the President assented to the Bombay Agricultural Debtors Relief (Amendment) Bill, 1951, on October 26, 1951."

RESOLUTION:- The law should be published as Bombay Act No. XLI of 1951, in the Bombay Government Gazette dated the 6th November, 1951.

2. The Act should be translated into Marathi, Gujarati, Kannada and Hindi (in Devnagari script) and the translations should be published in the Bombay Government Gazette.

3. A copy of the Act should be forwarded to the Development Department with reference to the Memorandum from that Department No. ADR 5650/C, dated the 7th August, 1951.

By order of the Governor of Bombay,

Sd./- K.M.Pathare.
Assistant Secretary to Government.

To
The Manager, GovernmentCentral Press, Bombay (with a copy of the Act and with a request that 30 Gazette copies of the Act may be forwarded to th Legal Department and 10 copies to the Development Department).

SVV
22.6.56.
4 c.

REGISTERED No. B-1

The

Bombay Government Gazette

PUBLISHED BY AUTHORITY

WEDNESDAY, 8TH AUGUST 1951.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V

[To be translated into Marathi, Gujarati, Kannada and Hindi (in Devnagari script) and the translations to be published in the " Bombay Government Gazette ". The dates of publication to be reported.]

The following Bill is published under the proviso to rule 80 of the Bombay Legislative Assembly Rules :—

L. A. BILL No. XXXIV OF 1951.

A Bill to amend the Bombay Agricultural Debtors Relief Act, 1947.

Bom. XXVIII of 1947. WHEREAS it is expedient to amend the Bombay Agricultural Debtors Relief Act, 1947, for the purposes hereinafter appearing ; It is hereby enacted as follows :—

1. This Act may be called the Bombay Agricultural Debtors Relief (Amendment) Act, 1951. Short title.

Bom. XXVIII of 1947. 2. In section 43 of the Bombay Agricultural Debtors Relief Act, 1947, hereinafter referred to as the said Act, in sub-clause (*vii*) of clause (1), for the words and figures " under section 47," the words, brackets and figures " under sub-section (*1*) or (*1A*) of section 47, adjudicating the debtor an insolvent," shall be substituted. Amendment of section 43 of Bom. XXVIII of 1947.

3. In section 47 of the said Act, after sub-section (*1*), the following sub-section shall be inserted, namely :— Amendment of section 47 of Bom. XXVIII of 1947.

" (*1A*) If at any time after the expiration of two years from the date of an award, the debtor satisfies the Court that there is no reasonable probability of his being in a position to pay the remaining amount of instalments fixed under the award, the Court may, notwithstanding anything contained in this Act, after giving notice to the creditor modify the terms of the award and reduce the amount of the instalment as it may think fit, provided that the total annual instalments in which the balance of the debts shall be paid in such instalments shall not exceed twenty or the Court may make an order adjudicating the debtor an insolvent. "

4. In section 48 of the said Act, for the words and figures " under section 47 " the words, brackets and figures " under sub-section (*1*) or (*1A*) of section 47 " shall be substituted. Amendment of section 48 of Bom. XXVIII of 1947.

STATEMENT OF OBJECTS AND REASONS.

Section 47 (*1*) of the Bombay Agricultural Debtors Relief Act, 1947, lays down that if at any stage of the proceedings under Chapter II the Court finds that the income of the debtor and his moveable property are not sufficient to allow his debts to be liquidated by annual instalments not exceeding 12 in number, the Court shall make an order declaring the debtor an insolvent. The High Court of Bombay has recently held in two revisional applications that looking at section 47 as a whole it is clear that what the Legislature contemplated was adjudication of the insolvent only before the award was made. Once the award was made then there was a determination that the debtor had the capacity to pay and that determination should not be subsequently varied or modified at any subsequent proceedings. No where in the Act is there any provision for permitting the debtor to avail himself of insolvency proceedings in the case of his inability to pay the instalments as fixed in the award. His Lordship the Chief Justice has observed as follows :—

> "I have had already occasion to point out the serious lacuna that exists in the Act and this case further emphasises the fact that the Legislature has overlooked the possibility of the income of the debtor being reduced after the instalments are fixed by the Debt Adjustment Court or by the appellate Court. This is a matter which the Legislature should take up without further delay."

The Bill seeks to rectify this omission and provides for the debtor being adjudicated an insolvent after the award is passed. Consequential changes have also been proposed in sections 43 and 48.

Dated th 4th August 1951. (Signed) VAIKUNTH L. MEHTA.

By order of the Governor of Bombay,

J. R. DHURANDHAR,
Secretary to the Government of Bombay,
Legal Department.

Bombay, dated the 8th August 1951.

BOMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS.

L. A. BILL No. XXXIV OF 1951.

A Bill to amend the Bombay Agricultural Debtors Relief Act, 1947.

(As read for the third time and passed by the Legislative Assembly on the 17th August 1951.)

Bom. XXVIII of 1947.

WHEREAS it is expedient to amend the Bombay Agricultural Debtors Relief Act, 1947, for the purposes hereinafter appearing; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Bombay Agricultural Debtors Relief (Amendment) Act, 1951.

Bom. XXVIII of 1947.

Amendment of section 43 of Bom. XXVIII of 1947.

2. In section 43 of the Bombay Agricultural Debtors Relief Act, 1947, hereinafter referred to as the said Act, in sub-clause (*vii*) of clause (1), for the words and figures "under section 47," the words, brackets and figures "under sub-section (*1*) or (*1A*) of section 47, adjudicating the debtor an insolvent," shall be substituted.

Amendment of section 47 of Bom. XXVIII of 1947.

3. In section 47 of the said Act, after sub-section (*1*), the following sub-section shall be inserted, namely :—

"(*1A*) If at any time after the expiration of two years from the date of an award, the debtor satisfies the Court that there is no reasonable probability of his being in a position to pay the remaining amount of instalments fixed under the award, the Court may, notwithstanding anything contained in this Act, after giving notice to the creditor modify the terms of the award and reduce the amount of the instalment as it may think fit, provided that the total annual instalments in which the balance of the debts shall be paid in such instalments shall not exceed twenty or the Court may make an order adjudicating the debtor an insolvent."

Amendment of section 48 of Bom. XXVIII of 1947.

4. In section 48 of the said Act, for the words and figures "under section 47" the words, brackets and figures "under sub-section (*1*) or (*1A*) of section 47" shall be substituted.

CON. Bk Hb 149

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STATEMENT OF OBJECTS AND REASONS.

Section 47 (*1*) of the Bombay Agricultural Debtors Relief Act, 1947, lays down that if at any stage of the proceedings under Chapter II the Court finds that the income of the debtor and his moveable property are not sufficient to allow his debts to be liquidated by annual instalments not exceeding 12 in number, the Court shall make an order declaring the debtor an insolvent. The High Court of Bombay has recently held in two revisional applications that looking at section 47 as a whole it is clear that what the Legislature contemplated was adjudication of the insolvent only before the award was made. Once the award was made then there was a determination that the debtor had the capacity to pay and that determination should not be subsequently varied or modified at any subsequent proceedings. No where in the Act is there any provision for permitting the debtor to avail himself of insolvency proceedings in the case of his inability to pay the instalments as fixed in the award. His Lordship the Chief Justice has observed as follows :—

> "I have had already occasion to point out the serious lacuna that exists in the Act and this case further emphasises the fact that the Legislature has overlooked the possibility of the income of the debtor being reduced after the instalments are fixed by the Debt Adjustment Court or by the appellate Court. This is a matter which the Legislature should take up without further delay."

The Bill seeks to rectify this omission and provides for the debtor being adjudicated an insolvent after the award is passed. Consequential changes have also been proposed in sections 43 and 48.

Dated the 4th August 1951.

VAIKUNTH L. MEHTA.

Government of Bombay

LEGAL DEPARTMENT

[L. A. BILL No. XXXIV OF 1951.]

(As read for the third time and passed by the Legislative Assembly on the 17th August 1951.)

A Bill to amend the Bombay Agricultural Debtors Relief Act, 1947.

[SHRI VAIKUNTH L. MEHTA, M.L.A.

BOMBAY: PRINTED AT THE GOVERNMENT CENTRAL PRESS.

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L. A. BILL No. XXXIV OF 1951.

A Bill to amend the Bombay Agricultural Debtors Relief Act, 1947.

(As read for the third time and passed by the Legislative Assembly on the 17th August 1951.)

(As read for the third time and passed by the Legislative Council on the 31st August 1951.)

Bom. XXVIII of 1947.

WHEREAS it is expedient to amend the Bombay Agricultural Debtors Relief Act, 1947, for the purposes hereinafter appearing; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Bombay Agricultural Debtors Relief (Amendment) Act, 1951.

Amendment of section 43 of Bom. XXVIII of 1947.

2. In section 43 of the Bombay Agricultural Debtors Relief Act, 1947, hereinafter referred to as the said Act, in sub-clause (*vii*) of clause (1), for the words and figures "under section 47," the words, brackets and figures "under sub-section (*1*) or (*1A*) of section 47, adjudicating the debtor an insolvent," shall be substituted.

Amendment of section 47 of Bom. XXVIII of 1947.

3. In section 47 of the said Act, after sub-section (*1*), the following sub-section shall be inserted, namely :—

"(*1A*) If at any time after the expiration of two years from the date of an award, the debtor satisfies the Court that there is no reasonable probability of his being in a position to pay the remaining amount of instalments fixed under the award, the Court may, notwithstanding anything contained in this Act, after giving notice to the creditor modify the terms of the award and reduce the amount of the instalment as it may think fit, provided that the total annual instalments in which the balance of the debts shall be paid in such instalments shall not exceed twenty or the Court may make an order adjudicating the debtor an insolvent."

Amendment of section 48 of Bom. XXVIII of 1947.

4. In section 48 of the said Act, for the words and figures "under section 47" the words, brackets and figures "under sub-section (*1*) or (*1A*) of section 47" shall be substituted.

Government of Bombay

LEGAL DEPARTMENT

[L. A. BILL No. XXXIV OF 1951.]

(As read for the third time and passed by the Legislative Assembly on the 17th August 1951.)

(As read for the third time and passed by the Legislative Council on the 31st August 1951.)

A Bill to amend the Bombay Agricultural Debtors Relief Act, 1947.

[Shri VAIKUNTH L. MEHTA, M.L.A.]

BOMBAY: PRINTED AT THE GOVERNMENT CENTRAL PRESS.

REGISTERED No. B-1

The

Bombay Government Gazette

PUBLISHED BY AUTHORITY

TUESDAY, 6TH NOVEMBER 1951.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV

Acts of the Bombay Legislature and Ordinances promulgated and Regulations made by the Governor.

CONTENTS

	PAGES
BOMBAY ACT No. XLI OF 1951—An Act to amend the Bombay Agricultural Debtors Relief Act, 1947	226-227

The following Act of the Bombay Legislature having been assented to by the President on the 26th October 1951 is hereby published for general information.

J. R. DHURANDHAR,
Secretary to the Government of Bombay,
Legal Department.

BOMBAY ACT No. XLI OF 1951.

(*First published, after having received the assent of the President, in the "Bombay Government Gazette" on the 6th November 1951.*)

An Act to amend the Bombay Agricultural Debtors Relief Act, 1947.

Bom. XXVIII of 1947.

WHEREAS it is expedient to amend the Bombay Agricultural Debtors Relief Act, 1947, for the purposes hereinafter appearing; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Bombay Agricultural Debtors Relief (Amendment) Act, 1951.

Bom. XXVIII of 1947.

Amendment of section 43 of Bom. XXVIII of 1947.

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3. In section 47 of the said Act, after sub-section (*1*), the following sub-section shall be inserted, namely :—

"(*1A*) If at any time after the expiration of two years from the date of an award, the debtor satisfies the Court that there is no reasonable probability of his being in a position to pay the remaining amount of instalments fixed under

the award, the Court may, notwithstanding anything contained in this Act, after giving notice to the creditor modify the terms of the award and reduce the amount of the instalment as it may think fit, provided that the total annual instalments in which the balance of the debts shall be paid in such instalments shall not exceed twenty or the Court may make an order adjudicating the debtor an insolvent."

Amendment of section 48 of Bom. XXVIII of 1947.

4. In section 48 of the said Act, for the words and figures "under section 47" the words, brackets and figures "under sub-section (*1*) or (*1A*) of section 47" shall be substituted.

BOMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS.